

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2017

Public Authority: Financial Ombudsman Service
Address: Exchange Tower
South Quay Plaza
183 Marsh Wall
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information about whether a financial business stamped certain documents confidential when submitting information to the Financial Ombudsman Service ("FOS") as part of their investigation into individual complaints. The FOS refused to comply with the request under section 12 of the Freedom of Information Act (FOIA). The complainant subsequently contested the FOS's refusal.
2. The Commissioner's decision is that the FOS has correctly applied section 12(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 1 February 2017, the complainant wrote to the FOS and requested information in the following terms:

1. You stated that you and your colleague, [name redacted], have been "unable to locate any agreements, processes or communications with RBS or NatWest relating to them using a confidentiality stamp". But can you please state for the record, as a matter of fact, that no agreement, processes or communications exists or has existed between the bank and the FOS relating to their use of a confidentiality stamp or statement, and relating to what evidence the bank submits to the FOS which the

bank would like the FOS to consider confidential and not to be released to complainants or third parties. If such agreements, processes or communications exists or has existed, can you please provide me with a copy of them.

*2. Has the confidentiality stamp that was used on the CES notes document the bank submitted to the FOS been use on other evidence in cases other than my own? **Yes** or **no**.*

*3. Was the confidentiality stamp which the bank used on the evidence it submitted to the FOS in my case used as standard by the bank (i.e on a large proportion or a significant number of the documents and evidence the bank submitted to the FOS) between 2011 and 2014? **Yes** or **no**.*

*4. Was the same statement regarding confidentiality used as standard by the bank on emails the bank sent to the FOS (when it submitted evidence electronically) between 2011 and 2014? **Yes** or **no**.*

5. The FOS responded on 16 February 2017. It stated that it was unable to provide an answer as it did not record the requested information in a searchable form on its system and extracting the information would far surpass the 'appropriate limit' of £450, or 18 hours at £25 per hour set out in section 12 of the FOIA.
6. The complainant requested an internal review on the same day.
7. Following an internal review the FOS wrote to the complainant on 15 March 2017. It stated that the clarified request would engage section 12.

Scope of the case

8. The complainant contacted the Commissioner on 28 April 2017 to complain about the way his request for information had been handled.
9. The Commissioner asked the FOS to provide its final position. The FOS subsequently reiterated to the Commissioner that it considered the complainant's information request would vastly exceed the appropriate time limit set out in section 12 of the FOIA.
10. The FOS also cited section 14(1) of the FOIA in its response by arguing that the complainant's request was part of a continuation of behaviour which is aimed to cause the FOS disruption. It is understood that there is a wider dispute between the parties which has lasted since the requester's first complaint to the FOS closed in 2013.

11. The Commissioner has firstly considered the FOS's application of section 12(2) of the FOIA.

Reasons for decision

Section 12 (2) - The cost of compliance

12. Section 12 (2) of the FOIA states:

Subsection 1 does not exempt the public authority from its obligation to comply with paragraph (a) of section 1 (1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
14. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
- determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

Is section 12 (2) engaged?

The FOS's position

15. The FOS has estimated that it would exceed the appropriate limit to establish whether it holds any information captured by the request.

16. The FOS considers that compliance with the request would require it to manually search every complaint they have had with NatWest and the Royal Bank of Scotland since 2011, the size of which could be from anywhere between 200 to 5,000 pages long.
17. The FOS state that prior to 2014, they also had a paper filing system. This, they claim, means that the FOS would have to request all the paper files back from an archive system as any information sent from NatWest or the Royal Bank of Scotland would not have been scanned onto the system.
18. In their response, the FOS identified that between 1 January 2011 and 31 December 2016, they had received 102,642 cases about NatWest or the Royal Bank of Scotland.
19. Therefore, the FOS stated that compliance with the request would present difficulties as, although detailed information is kept in their archives, the information sought by the request was not recorded routinely. The FOS calculated that they would have to review 95 cases a minute in order to bring the information inside the cost limit.

The Commissioner's conclusion

20. The Commissioner has considered the FOS's submissions and recognises that compilation of the information sought by the request would require the manual review hardcopy records that pre-date 2014 and individual electronic records.
21. The FOS has provided the estimated total time and cost that it considers compliance with the request would take. Although the Commissioner has noted the estimates the FOS has provided, it is noted that these are not based on a sampling exercise.
22. However, it remains evident that compliance with the request would require the manual review of 102,642 cases. It is of the view of the Commissioner that the time required to do this would vastly exceed the appropriate limit. On this basis, the Commissioner is satisfied that section 12 (2) applies to the request.
23. The complainant suggested that the FOS should carry out a sampling exercise to provide a practical solution to his request. However, under the FOIA a public authority is not required to carry out such an exercise and it would not therefore be a valid option in this particular case or something which the Commissioner could order the FOS to do.
24. As the Commissioner had found that section 12(2) of the FOIA is engaged, she has not gone on to consider the FOS's separate application of section 14(1).

Section 16 (1) - The duty to provide advice and assistance

25. Section 16 (1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16 (2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice ("the Code") issued by the Secretary of State, it will have complied with section 16 (1).
26. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12 (1) and the Regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the complainant with reasonable advice and assistance.
27. The ICO guidance states that the minimum a public authority should do in order to satisfy section 16 (1) is indicate if it is able to provide any information at all within the appropriate limit. If the complainant understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
28. In the circumstances of this case, the Commissioner recognises that the information sought by the request is not held in a manner that allows it to be directly retrieved. The Commissioner believes that as the FOS do not record the requested information in a searchable form, they are unable to provide advice on how to refine the request sufficiently enough to bring it within the 18 hour time limit. On this basis the Commissioner finds that the FOS has complied with section 16 (1).

Right of appeal

Either party has the right to appeal against this decision notice to the

29. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF